



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 20, 2022

IN THE MATTER OF:

Appeal Board No. 622629

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 21, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and, in the alternative, disqualifying the claimant from receiving benefits, effective August 21, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to August 21, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed March 31, 2022 (), the Administrative Law Judge overruled the initial determination of voluntary separation from employment without good cause and held the initial determination of misconduct academic.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the employer has indicated that the employer failed to appear at the adjourned hearing because the employer did not receive the Judge's phone calls, and the employer was not afforded an opportunity to speak with the Judge when the employer called the Hearing Section. In the interest of justice, the Board has determined to provide the employer another opportunity to appear and present testimony and evidence in this matter. Prior

to the remand hearing, the employer shall arrange with the Hearing Section to review the transcript of the hearing held on March 24, 2022 so that the employer will be prepared to cross-examine the claimant regarding his testimony at that hearing. The employer is directed to produce any video footage showing the area outside the office where the claimant interviewed for employment during the time the claimant was present at the employer's workplace on the day he was interviewed. If such video footage exists, the employer is directed to produce copies of this footage to both the Hearing Section and the claimant's attorney prior to the remand hearing. The Notice of Hearing for the remand hearing will advise the employer of the acceptable formats for the video. The parties shall be afforded an opportunity to present additional relevant and material testimony and evidence. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of voluntary separation from employment without good cause and misconduct, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of voluntary separation from employment without good cause and misconduct, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER